

his privilege of protecting the public. Not that the defendant is guilty as charged, but there is the possibility that the offender pending trial will commit other offenses against public order.

THE CHAIRMAN: Delegate Bothe.

DELEGATE BOTHE: Despite the fact that this issue was debated this morning, I feel the questions may be very much confused, partly because of the posture in which the matter came before this Committee of the Whole. The Committee on Personal Rights, on the other hand, had many hours to discuss and hear witnesses, concerning all the various aspects of what is a very complex, but extremely constitutional, problem.

Now, we have acted without any amendment or question or debate to grant to an accused all kinds of rights when he is tried for the offense. He is entitled to counsel: he is entitled to be confronted with his accusers; and we even put in a little amendment yesterday to make sure they were under oath when they confronted him.

This area, I say, is far more important to the rights of the accused, because a large number of accused, when they are tried for the offense after having spent months in jail waiting trial, the issue is a complete nullity. The court ends up giving them time served if they are guilty and if they are not guilty they have been punished anyway.

This issue is far more important in our modern-day context of criminal justice than the old-fashioned and traditional rights which, without dissent and by acclamation we agreed to put in the constitution.

We do not need a right to counsel. The system of justice will take care of that. We do not need a public trial. I am sure we will have public trials day in and day out, whether or not the constitution calls for them or not. We definitely need a principle in the constitution that entitles the presumption of innocence to have meaning and which states that people cannot be punished until and unless they have been found guilty under the elaborate procedures which we, without argument, state belong in the constitution.

I would point out we have had experience in the City of Baltimore, and I believe also in Montgomery and Prince George's County, with bail reform procedures and it has been found beyond any doubt that people can be released. Practically everyone who is jailed pending trial could have been released had this principle obtained in the practice and in the administration of justice.

THE CHAIRMAN: You have one-quarter of a minute, Delegate Bothe.

DELEGATE BOTHE: I would very briefly like to answer Delegate Scanlan. I do not know where he gets this picture which he gave you of people opposing the bail reform program in the District of Columbia, because of the recidivism problem.

THE CHAIRMAN: Your time has expired. You may finish your sentence if you want to.

DELEGATE BOTHE: I think I can put it all in one sentence if my breath is up to it.

THE CHAIRMAN: All right.

DELEGATE BOTHE: An investigation which was made by the American Bar Association in an effort to make recommendations to the body of that organization on the subject, was involved in a great deal of debate on this question of preventive detention, and elected to recommend that there be no preventive detention implicit in the idea of bail. The reason that they did that was because after the experiment in the District of Columbia, there was so little recidivism that they felt it unfair and unwise to place any restriction on the release of people pending bail. I can show you all the statistics, Delegate Scanlan, if you want to see them, but the example you cite is exactly the reason why preventive detention has been rejected by some very prestigious authorities.

THE CHAIRMAN: Are you ready for the question?

The Clerk will ring the quorum bell.

The question arises on the motion to reconsider the vote by which Amendment No. 12 was adopted. A vote Aye is a vote in favor of reconsideration. A vote No a vote against.

If the motion is carried, Amendment No. 12 will be before you for further action. A vote Aye is a vote for reconsideration; a vote No, a vote against.

Cast your vote.

Has every delegate voted?

Does any delegate desire to change his vote?

*(There was no response.)*

The Clerk will record the vote.

There being 53 votes in the affirmative and 70 in the negative, the motion is lost.